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ONTARIO SECURITIES COMMISSION

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# PERSPECTIVES

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SUMMER 1998

## Proposed Legislation on Civil Liability

Proposed legislation would give investors a statutory right of reliance in civil actions against issuers.....1

## Mutual Reliance MOU

A draft Memorandum of Understanding establishing the Mutual Reliance Review System was published on June 22 .....1

## OSC Developing NETS Rule

The OSC is developing a regulatory framework for Non-SRO sponsored Electronic Trading Systems NETS .....3

## Council of Financial Regulators Proposed

A draft paper recommends the creation of a new agency to regulate insurance distributors and the establishment of a new Council of Financial Services Regulators .....3

## OSC to Upgrade Insider Reporting Monitoring

The OSC is focusing greater attention on monitoring and enforcing the timeliness and accuracy of insider reporting .....3

## OSC Launches

[www.osc.gov.on.ca](http://www.osc.gov.on.ca) .....6

**Also** Amendment to Local Definitions Rule, Year 2000 Steering Committee Created, Eaton's Preliminary Prospectus Leak, Financial Conglomerates Joint Forum, Use of Currencies, SEDAR Filing Problems, and Canadian Securities Administrators Spring Meeting Results.

## FEATURE

Government Publications

## Setting New Standards: Reporting on Mining Exploration and Development

On June 8 1998, a Task Force established by the Ontario Securities Commission and the Toronto Stock Exchange in the wake of Bre-X proposed new and higher disclosure standards for Canadian mining companies than exist in any other major mining jurisdiction. The recommendations aim to reinforce Canada's leadership in the exploration and mining industry, ensure a high level of investor protection, and reinforce global investor confidence in the Canadian securities markets.

The key recommendations in the TSE/OSC Mining Standards Task Force Interim Report include:

1. Formalizing the role of the Qualified Person (QP) in all disclosure. A QP is defined to be a person with five years of appropriate experience and membership in a professional association of engineers or geoscientists. All disclosure regarding material mining projects will have to be based on the work of a QP.
2. Extension of QP involvement to exploration activity reporting. The Mining Standards Task Force has specifically recommended the involvement of a QP in all disclosure related to exploration properties and results, which goes beyond the Australian requirements for QP involvement.

(continued on page 9)

## INDEX

FEATURE .....	COVER
Mining Report	
POLICY PROFILES .....	1
Proposed Legislation on Civil Liability for Continuous Disclosure, "The Virtual National Commission", Escrow Regime for IPOs, Exempt Distribution, Amendment to Local Definitions Rule	
OSC REPORTS .....	2
Year 2000 Steering Committee, OSC Statement of Priorities, Financial Planning Regulation at Issue, OSC Develops NETS Rule, New Insurance Regulator and New Council of Financial Regulators Proposed, OSC to Upgrade Insider Reporting Monitoring, Eaton's Preliminary Prospectus Leak, Financial Conglomerates Joint Forum, Use of Currencies, Change of Auditor, Amendment to CBCA Filing Order, OSC to Accept Insider Report for Newfoundland and Labrador, Incorrect Formats for SEDAR, Dialogue with the OSC, OSC Launches Web Site, Four IOSCO Papers.	
CANADIAN SECURITIES ADMINISTRATORS REPORT .....	6
CSA Spring Meeting	
ENFORCEMENT .....	7
Recent Commission Proceedings	
DAVID BROWN SPEAKS ON MUTUAL FUND INDUSTRY .....	9



## POLICY PROFILES

*An overview of policy initiatives and where they stand in the policy development and implementation process.*

## Proposed Legislation on Civil Liability for Continuous Disclosure

If proposed legislation is put in place, investors in Ontario and several other provinces will have a statutory right of reliance in civil actions brought against issuers for misleading statements in news releases, annual reports and other continuous disclosure documents. The legislation would support the OSC's commitment, stated in its 1998/99 Business Plan, to increase its regulation of the secondary market, in part by devoting more resources to reviewing continuous disclosure filings.

*"The legislation would support the OSC's commitment, stated in its 1998/99 Business Plan, to increase its regulation of the secondary market..."*

The Canadian Securities Administrators developed the proposed legislation in response to the recommendations of the final report of the Toronto Stock Exchange Committee on Corporate Disclosure. The TSE Committee found evidence of disclosure violations and a perception of inadequate disclosure in Canada. It also recommended that investors have the same statutory remedy for misrepresentations in continuous disclosure documents and oral statements as currently exists for misrepresentations in a prospectus. More information on these and other initiatives may be found on the OSC web site [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

Several CSA members, including the securities commissions in Ontario, British Columbia, Alberta and Saskatchewan, published the proposed legislation for comment on May 29, 1998. The comment period in Ontario is 90 days.

The CSA has noted that the TSE Committee's recommendations were controversial, and they anticipate governments will receive criticism regarding the proposed legislation. Although the OSC has recommended that the proposal be adopted, the Ontario government has made no decision to proceed.

The Notice and Request for Comment also indicate that the CSA will consider other TSE Committee recommendations, such as the adoption of an integrated disclosure system for reporting issuers.

For more information, contact **Susan Wolburgh Jenah**, Manager, Market Operations (416) 593-8245.

21 OSCB, May 29, 1998 page 3367

## "The Virtual National Commission": Mutual Reliance Review System Memorandum Issued for Comment

On June 22, a draft Memorandum of Understanding establishing the Mutual Reliance Review System was published. The MRRS aims to improve the time and cost efficiencies of Canada's capital markets by streamlining the review of key filings (see Perspectives, Winter 1998).

Under mutual reliance, a filer would generally deal with only one securities commission in Canada, its principal regulator. The system is not mandatory; if an issuer does not wish to use the system, it can choose to file its documents in each relevant jurisdiction.

*"The CSA is currently seeking volunteers to participate in testing of the MRRS."*

The MRRS would apply to the filing of prospectuses (including mutual fund prospectuses) and initial annual information forms, registration applications for advisers and SRO dealers and applications for discretionary relief.

The CSA has published for comment drafts of the following instruments that would bring mutual reliance into effect:

- the MRRS memorandum of understanding among the members of the CSA;
- National Policy 43-201, MRRS for Prospectuses and Initial Annual Information Forms; and
- National Instrument 31-101 and Companion Policy 31-101, MRRS for Registration.

The CSA is currently seeking volunteers to participate in testing of the MRRS for prospectuses and Initial Annual Information Forms and welcomes all comments on the MRRS.

A concept release related to MRRS for applications was published for comment in January 1998. The comments and results of testing are currently being evaluated and a policy is being developed. It will be issued for comment shortly.

For more information, see the Request for Comments published in the OSC Bulletin on June 19, 1998, call **Kathy Soden**, Manager, Market Operations, (416) 593-8149; or visit the OSC web site [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

21 OSCB June 19, 1998 page 3882

## Escrow Regime for IPOs

The OSC together with the other members of the CSA has published for comment a proposal for a National Escrow Regime applicable to Initial Public Distributions.

The securities legislation of most of the provinces and territories in Canada prohibits the regulator from issuing a



receipt for an issuer's prospectus where an escrow agreement that the regulator considers necessary or advisable has not been entered into. To date there has been no uniform approach to escrow among the securities regulatory authorities of the different Canadian jurisdictions. The CSA believes that a simplified, uniform national approach to escrow will promote greater efficiency and place issuers, principals and public investors in different jurisdictions on a more level footing.

The proposal has been structured around the fundamental objective of ensuring that issuers' management and other key principals retain an equity interest in an issuer for an appropriate period following an initial public distribution by prospectus (IPO). This continuing interest provides an incentive for the principals to remain with, and devote their time and attention to the affairs of the issuer, to the benefit of all shareholders.

For more information, contact **Rick Whiler**, Lead Accountant, Market Operations (416) 593-8127, or **Ram Ramachandran**, Associate Chief Accountant, (416) 593-8253.

*OSCB May 8, 1998 page 2927*

## Exempt Distributions

Following a comment period, the OSC has amended a proposed Rule, Policy and Forms on Exempt Distributions (Rule 45-501), and is republishing them for comment.

The purpose of the proposed Rule is to consolidate current requirements on exempt distributions. It also establishes some new exemptions from the registration and prospectus requirements of the Act. The proposed Rule also sets out restrictions on the resale of securities purchased in reliance on certain exemptions. In addition, the Commission has concluded that the phrase "initial exempt trade" permits "tacking" of hold periods.

For more information, call **Iva Vranic**, Legal Counsel, Market Operations (416) 593-8115.

*21 OSCB May 29, 1998 page 3386*

## Amendment to Local Definitions Rule

In July 1997, the OSC adopted Rule 14-501 on Definitions to provide a consistent approach to the interpretation of terms used in more than one rule. The Rule contains definitions of terms in the Act or the Regulation that are defined other than in the general definition section of the Act. This is so as to extend their application to the rules formulated under section 143 of the Securities Act. This Rule also provides a framework of terms with definitions agreed on by the Commission for use in future rules.

Currently, a proposed amendment to this Rule would amend, delete or add certain terms. Some of the more material amendments include:

- amending the definition of "contractual right of action" to extend it to any seller of securities and to extend the time period for exercise from 90 days to 180 days;
- amending the definition of "offering memorandum" to delete references to particular prospectus exemptions; and
- adding definitions of "future-oriented financial information" and "non-redeemable investment fund."

For more information, call **Randee Pavalow**, Manager, Market Operations (416) 593-8257.

*21 OSCB April 10, 1998 page 2341*

## OSC REPORTS

*An inside look at Commission developments and projects that will have an impact on the investment community.*

### Year 2000 Steering Committee Created

To provide a focal point for the OSC's Year 2000 initiatives, the Commission has created a Steering Committee that includes senior Commission staff and outside consultants with expertise on the issue (see Perspectives, Spring 1998).

The Committee is expected to develop a number of specific projects within the Commission regarding the Year 2000. It will also harmonize the OSC's efforts with those of the Toronto Stock Exchange (TSE), the Investment Dealers Association of Canada (IDA), the Canadian Depository for Securities (CDS), the Group of 30, and other members of the CSA.

For more information, call **Barbara Hendrickson**, Project Coordinator, OSC Year 2000 Project, (416) 593-8084. Or visit the OSC web site [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

*21 OSCB June 12, 1998 page 3662*

## OSC Statement of Priorities

On June 24, 1998, the Ontario Securities Commission's **Statement of Priorities** for 1998/99 was submitted to the Minister of Finance and published in the OSC Bulletin on June 26, 1998 (Perspectives, Spring 1998). A draft of the Statement was published in the April 3, 1998 Bulletin with a Request for Comment. The comments received were generally favourable. No revisions were made as a result of feedback; however, one additional priority was added dealing with Year 2000 issues.

For more information contact **Mark Conacher**, Director, Corporate Relations, (416) 593-8073, **Robert Day**, Manager, Business Planning, (416) 593-8179, or visit the OSC web site [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

*21 OSCB June 26, 1998 Page 4017*



## Financial Planning Regulation At Issue

Following the withdrawal of the Canadian Securities Institute (CSI) and the Institute of Canadian Bankers (ICB) in April from the Financial Planners Standards Council (FPSC), the Ontario Securities Commission is meeting with industry organizations to urge the creation of a common proficiency standard for financial planners.

The Council was formed two years ago to develop uniform standards for financial planners. Since withdrawing from the Council, the CSI and the ICB have announced plans to establish their own proficiency standards for financial planners. On behalf of the CSI and other members of the Securities Industry Advisory Council, the Investment Dealers Association has indicated that financial planners at securities firms would be subject to rules similar to those now applied to stockbrokers.

*"The OSC is considering how it will oversee financial planners in the future."*

In addition to encouraging the development of a single proficiency standard, the OSC is also considering how it will oversee financial planners in the future. Possibilities include creating a new category of registration of financial planners; legislating regulation of financial planners, as is currently underway in Saskatchewan; or regulating the financial planning activities of current OSC registrants.

For more information, contact **Paul Bourque** Director, Market Operations, (416) 593-8204.

## OSC Developing NETS Rule

With NETS (Non-SRO sponsored Electronic Trading Systems) fast becoming a major force in the securities industry, the OSC is developing a regulatory framework that addresses the key issues raised by this kind of trading.

The OSC hosted a forum on April 23 at which more than a dozen industry participants presented their recommendations concerning the inclusion of NETS in the market for Canadian equities. Views ranged from the argument that NETS should be allowed to operate unimpeded in the marketplace, to the belief that trades, bids and offers that occur on NETS must be integrated into established stock exchanges in order to preserve market transparency (public display of information).

OSC staff is currently working on preparing a draft rule, expected to be released for comment this autumn.

For more information, call **Randee Pavalow**, Policy Coordinator, (416) 593-8257.

20 OSCB May 16, 1997 Page 2565

## New Insurance Regulator and New Council of Financial Regulators Proposed

To cope with a dynamic financial services industry in which a growing number of firms offer an array of products including insurance and securities, a draft paper recommends the creation of a new agency to regulate insurance distribution and the establishment of a Council of Financial Services Regulators.

The discussion paper issued by the Ontario Insurance Commission in June proposes a self-funded regulatory body with rule-making power that would regulate all forms of insurance distribution — direct or through intermediaries, group or individual products, general or life insurance. The Insurance Act would be amended to update its provisions, eliminating outdated limitations, and to clarify the accountability of a firm for the actions of its sales staff.

In order to increase regulatory coordination, the paper also proposes the creation of a Council of Financial Regulators of Ontario. It would be made up of the heads of the OSC, the Financial Services Commission and the proposed insurance distribution regulator. The Council's mandate would be to enhance the quality and efficiency of regulation of financial services in Ontario. Council initiatives might include developing one-stop access to financial services regulators for both consumers and industry participants and developing ways to reduce duplication, gaps or conflicts in the regulatory system.

The document is available at the Ontario Insurance Commission's Web site ([www.ontarioinsurance.com](http://www.ontarioinsurance.com)), or by calling 1-800-263-7695. For more information, call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

21 OSCB June 26, 1998 Page 4024

## OSC To Upgrade Insider Reporting Monitoring

With the resources available due to self-funding, the OSC is now focusing greater attention on monitoring and enforcing the timeliness and accuracy of insider reporting.

*"The Committee envisions the development of a central database of insider reports and related information."*

In its Statement of Priorities for 1998/99, the OSC noted that initiatives in this area are underway. This includes the creation of a single, national system for filing insider reports, approved by the CSA on April 2. A Working Committee with representatives from Ontario, Alberta, British

Columbia and Quebec met in Toronto on June 18-19 to determine the system requirements for electronic filing. The system would be Internet-based, with provision for paper and fax filing as well.

The Committee envisions the development of a central database of insider reports and related information. Input and access would be available to authorized users through an Internet browser. The system would also allow for public inquiries on the Internet, based on parameters such as issuers, insider, and dates of trades or filings. A Request for Proposal is now being prepared on developing and operating this system on behalf of the CSA.

Other initiatives on insider reporting include the following:

- The OSC will publish a compliance guidance manual to assist filers in understanding filing requirements.
- The OSC made a Rule allowing the filing of insider reports by fax, making it easier for insiders to report, and also lowering the OSC's administrative burden of checking for duplicate reports. The Rule came into effect on May 5, 1998.
- The OSC has prepared amendments to the *Securities Act* to improve reporting requirements, which currently require that insiders report within 10 days following the end of the month the transaction took place.

For more information, call **Paul De Souza**, Manager, Market Operations (416) 593-8313.

## Eaton's Preliminary Prospectus Leak

The leak of information from the preliminary prospectus of the T. Eaton Co. Limited, before it was filed with the OSC, has led the Commission to ask the underwriting syndicate to provide information on its internal investigations of the matter.

On April 14, 1998, an article appeared in *The Globe and Mail* regarding a proposed \$175 million IPO by Eaton's. The next day, another article appeared with details provided by "sources" who had read a draft of the preliminary prospectus. The preliminary prospectus was filed with the OSC on April 17.

Following publication of the articles, OSC staff met with a representative of Eaton's, the lead underwriters and their legal advisors on this issue. Staff believe that releasing the information in the articles prior to the filing was a "clear and serious contravention of the *Securities Act*." In general, the release of information prior to the filing of a preliminary prospectus is a violation of Ontario securities law and may lead to enforcement action and/or the imposition of a "cooling off period" between the leakage of the information and the issuance of a receipt for the preliminary prospectus.

In this case, staff noted that the information reported by the *Globe* was accurate and not unduly promotional, and decided that it was in the public interest to allow all information about the IPO to be made public. Accordingly, the preliminary prospectus was filed and receipted on April 17.

The OSC has sent a letter to all parties involved in the offering requesting a summary of current procedures to

prevent the dissemination of confidential information, as well as procedures followed in this case. Staff have also asked for information on the underwriters' internal investigations.

For more information, call **Paul Bourque**, Director, Market Operations, (416) 593-8204.

21 OSCB April 24, 1998 page 2565

## Financial Conglomerates Joint Forum

The Joint Forum on Financial Conglomerates has released a number of working papers on important issues for regulators and financial supervisors in the banking, securities and insurance sectors. In particular, the papers address issues arising from the continuing emergence of internationally active financial conglomerates and the blurring of distinctions between key financial sectors.

The Joint Forum was established in 1996 under the aegis of the Basle Committee on Banking Supervision, the International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS). Thirteen countries are represented, including Canada.

The Joint Forum documents are accessible on the IOSCO Web site (<http://www.iosco.org>).

For more information, call **Tanis MacLaren**, Associate General Counsel (416) 593-8259.

21 OSCB February 27, 1998 page 1348

## Use of Currencies: Proposed National Instrument

The Proposed National Instrument on Use of Currencies and Rescission of National Policy Statement No. 14 (NI 52-102) regulates the use of currencies in material filed or delivered to securities regulatory authorities and securityholders under securities legislation. It is based on and will replace National Policy Statement No. 14.

The proposed National Instrument applies to financial information, including any financial statements presented in a bid document (e.g. take-over or issuer bids) or disclosure documents. It requires the currency of display of financial information to be disclosed.

NP14 permits financial disclosure using any currency of display provided that their currency is reasonable in the circumstances. This reasonableness test has caused ambiguity in the past. As a result, the reasonableness standard has been replaced in the proposed national instrument by a requirement that the currency of display be the measurement currency, the Canadian dollar, or the US dollar. The measurement currency is the primary currency used by a person or company.



In addition, the proposed National Instrument requires the measurement currency to be disclosed if it is other than the Canadian or US dollar, or if it is not the same as the currency of display for financial information.

For more information, call **Ram Ramachandran**, (416) 593-8253.

*21 OSCB May 29, 1998 Page 3424*

## Change of Auditor: Proposed National Instrument

Proposed National Instrument 52-103 (Change of Auditor and Rescission of National Policy Statement No. 31) regulates the disclosure required when a reporting issuer changes its auditor. It is based on and will replace National Policy Statement No. 31.

The proposed national instrument introduces a number of changes, including a new requirement that the change of auditor notice be signed by two representatives of the issuer's board of directors. It also introduces a new exemption when there is a change of auditor because of an amalgamation, arrangement, take-over bid or similar transaction, if that change has been disclosed and there has been no disagreement or consultation in the relevant period.

For more information, call **Ram Ramachandran**, (416) 593-8253.

*21 OSCB May 29, 1998 Page 3430*

## Amendment to CBCA Filing Order

The OSC is the regulatory body responsible for regulating certain provisions of the Ontario Business Corporations Act. In accordance with that, as of January 30, 1998, the Canada Business Corporations Act (CBCA) Director's single filing order has been amended to add British Columbia. All ten provinces and two territories are now covered.

The order provides that insider reports, interim financial statements, prospectuses, statements of material facts, registration statements and news releases ordinarily required to be filed with the CBCA office need not be sent to the Director if the documents containing similar information have been filed with any of the participating provincial and territorial securities commissions.

For more information, call **Industry Canada**, Corporation Directorate at (613) 941-9042.

*21 OSCB April 3, 1998 Page 2103*

## OSC To Accept Insider Reports on Behalf of Newfoundland and Labrador

The Securities Division of the Government of Newfoundland and Labrador has designated the OSC to accept insider reports on its behalf.

Insiders of companies that are reporting issuers in both Newfoundland and Labrador, and Ontario (other than those for which Newfoundland and Labrador are the Designated Jurisdiction or where the issuer has been notified by the Securities Division that it cannot rely on this designation order) may now discontinue filing insider reports in Newfoundland and Labrador.

For more information, call **Paul De Souza**, Manager, Market Operations, (416) 593-8313.

*21 OSCB March 20, 1998 page 1828*

## Incorrect Formats for SEDAR

About 15% of continuous disclosure filings made on SEDAR (System for Electronic Document Analysis and Retrieval) have unacceptable formats, according to the CSA. The result is an administrative burden for regulatory staff and delays in providing materials to the public.

Acceptable formats are:

- Corel WordPerfect for DOS or Windows, versions 5.1, 5.2 and 6.1
- Microsoft Word for Windows, versions 6.0x and 7.0
- Adobe Acrobat, versions 2.x and 3.0, the resulting format being commonly known as Portable Document Format (PDF).

For more information, call your local **CDS (SEDAR) Inc.** representative or the **Help Desk** at 1-800-219-5381.

*21 OSCB May 15, 1998 page 3079*

## Dialogue With the OSC

The Ontario Securities Commission's annual investment industry forum "Dialogue with the OSC" will be held on November 3, 1998 at the Westin Harbour Castle in Toronto. The conference brings together OSC staff with members of the financial community to discuss established priorities to the Year 2000.

For more information, call **Monica Zeller**, Communications Officer, (416) 593-8120.

## OSC Launches Web Site

The OSC's web site — [www.osc.gov.on.ca](http://www.osc.gov.on.ca) — is now up and running on the World Wide Web. The site features information about the OSC, investor education, rules and regulation, enforcement, and market participants.

For more information, call **Monica Zeller**, Communications Officer, (416) 593-8120.

## International Securities Commissions' Organization: Discussion Papers on Aspects of Securities Regulations

Recently, the International Organization of Securities Commissions (IOSCO) announced the release of four documents that are of considerable interest to securities regulators and market participants:

- (1) *Consultation Draft: "Objectives and Principles of Securities Regulation"*
- (2) *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (Report of the Technical Committee)*
- (3) *Risk Management and Control Guidance for Securities Firms and their Supervisors (Report of the Technical Committee)*
- (4) *Methodologies for Determining Minimum Capital Standards for Internationally Active Securities Firms (Report of the Technical Committee)*

A more detailed notice regarding these four documents was published in the Ontario Securities Commission Bulletin on July 3, 1998. All papers are accessible on the IOSCO Web site (<http://www.iosco.org>). Send any comments directly to Mr. E. Canadell, Secretary General, International Organization of Securities Commissions (IOSCO), P.O. Box 171, Stock Exchange Tower, 800, square Victoria, 42nd Floor, Suite 4210, Montreal, Quebec H4Z 1C8, Fax: (514) 875-2669, e-mail: [mail@oicv.iosco.org](mailto:mail@oicv.iosco.org) with a copy to **Randee B. Pavalow**, Policy Coordinator/Advisor and Manager of Advisory Services, Ontario Securities Commission.

For more information, contact **Randee Pavalow** at (416) 593-8257 or **Susan Greenglass**, Legal Counsel, Policy Coordinator, at (416) 593-8140.

## CANADIAN SECURITIES ADMINISTRATORS

*A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada. The principal current initiative of the CSA is the establishment of the mutual reliance system.*

## CSA Spring Meeting

Held on April 2-3 during the first international Investor Education Week, the CSA's Spring meeting marked progress on a number of securities industry initiatives. Highlights of the CSA's discussions included:

### Investor Education Week.

Among other activities organized by members of the CSA, the CSA began distributing an Investor Education Kit, designed to make investors more aware of the risks and rewards of securities investing.

### Mutual Funds Self-Regulatory Organization

The CSA anticipates that a new SRO will start accepting members in January 1999. With this initiative and a broader initiative to regulate all Quebec market intermediaries, the CSA expects to reduce the disparity in regulatory supervision between mutual fund distributors and securities firms (and individuals) that are members of an existing SRO.

### Mutual Reliance.

On June 22, the CSA published for comment the umbrella Memorandum of Understanding that will describe the mutual reliance regime (see page 1). The mutual reliance initiative involves the development of a regime for the review of prospectuses, the registration of advisers and SRO member dealers, and the processing of exemption applications in multiple jurisdictions (see Perspectives, Winter 1998).

### New Mining Standards.

On July 3 the CSA published for comment NI 43.101 (Standards of Disclosure for Exploration, Development and Mining Properties) It will replace and broaden existing National Policies 2-A and 22. (See Feature, cover page).

### Information Technology Initiatives.

The CSA discussed the recommendations of a technology needs assessment by Coopers & Lybrand. The CSA has begun preparing a Request for Proposal for an insider trading system (see page 3). The CSA also agreed in principle to have staff assess the feasibility of creating a national electronic data base compatible with the registration systems of CSA members, to meet the needs of both regulators and SROs.



**Year 2000.**

On January 30, 1998, the CSA published a staff notice regarding the Year 2000 issue. During the CSA meeting, several members noted that their staff will review Year 2000 disclosure of any prospectuses or continuous disclosure documents selected for review. The CSA also reviewed other steps taken by members regarding Year 2000 preparedness (see page 2).

**Cooperation with Insurance Regulators.**

Representatives of the CSA and the Canadian Council of Insurance Regulators agreed in principle to develop a framework for cooperation and exchange of information on issues of common interest. (see story page 3).

For more information, call **Kathy Soden**, Manager, Market Operations, (416) 593-8149.

21 OSCB April 10, 1998 page 2287

**ENFORCEMENT**

*The following are summaries of recent enforcement proceedings. For more information, please call Larry Waite, Director of Enforcement, (416) 593-8156.*

**Frank Mersch and Peter Cunti**

*(Deliberately misleading Staff of the Commission (Public Interest (s.127)))*

Mersch was an employee, director and officer of Altamira Investment Management Ltd. ("Altamira") and the Portfolio Manager of Altamira Account #31, the Altamira Equity Fund.

In or about February of 1993, Mersch was told that an opportunity existed to participate in a private placement being carried out by Rutherford Ventures Corp., subsequently known as Diamond Fields Resources Inc. In February and March of 1993, an investment dealer in British Columbia took steps to secure a private British Columbia corporation known as Dass No. 25 Holdings Ltd. for Mersch through which the investment in Diamond Fields would be made.

Pursuant to the private placement, Mersch caused Dass to purchase 25,000 units of Diamond Fields at a cost of \$0.15 per unit. On or about May 19, 1993, Mersch bought 190,000 units of Diamond Fields for Altamira Account #31 at a cost of \$2.85 per unit.

On March 6, 1997, Mersch gave an oral statement to staff of the Ontario Securities Commission in which he said that Peter Cunti had, from early 1993, been responsible for taking the necessary steps to cause Dass to invest in Diamond Fields. In fact, Cunti had no direct involvement with Dass until March 1994. Mersch deliberately misled OSC staff as to the timing of Cunti's involvement with Dass.

Mersch admitted that his conduct was contrary to the public interest and agreed to a six-month prohibition from applying for registration under the *Securities Act*. Mersch's registration was automatically suspended on May 7, 1998, when he resigned his position with Altamira.

**Alexis Fortuna-St. John, Antonia Storm-St. John and Phoenix Head Enterprises of Canada**

*(Trading in securities without being registered (Public Interest (s.127)))*

Alexis Fortuna-St. John of Kingsville, Ontario, operated a sole proprietorship, Phoenix Head Enterprises of Canada. Neither St. John nor Phoenix Head was ever registered with the Commission.

The Commission found that, from January 1 to August 31, 1996, St. John caused Phoenix Head to receive investments from between 800 and 1,000 individuals, amounting to over \$3.8 million. The agreement between Phoenix Head and investors provided that the amounts deposited by the investor would be invested in Canadian stocks and the investor would be entitled to receive, on notice to Phoenix Head, the greater of (a) the amount invested plus interest at 10 percent per annum or (b) the value of the investor's account at the time repayment was sought, in each case less the Phoenix Head management fee.

Contrary to this agreement, St. John advanced, out of the money provided to Phoenix Head by investors, approximately \$375,000 to firms or corporations in which she or a member of her family had an interest. Only \$3,000 of this amount was repaid. The Commission also found that approximately \$2 million advanced to Phoenix Head by investors had disappeared, without a credible explanation as to what happened to the money.

On learning that staff of the Commission was investigating her affairs and those of Phoenix Head, St. John attempted to conceal her activities and to falsify records being delivered to the Commission. She sought the cooperation of some investors in backdating contracts which purported, incorrectly, to describe the agreements between Phoenix Head and investors as loans. She also sought the cooperation of investors to destroy documents to frustrate the ability of the Commission to investigate her affairs and those of Phoenix Head. Further, account statements given by Phoenix Head to investors were found to be complete fabrications, showing purchases of shares which had never been made.

The Commission found that St. John's conduct was objectionable and violated the *Securities Act*, resulting in substantial losses to persons who had trusted her with their savings. It also involved attempts to induce others to destroy evidence and otherwise act improperly. The Commission concluded that St. John was not a person who could be safely trusted to participate in the capital markets in any way and, accordingly, ordered that she cease trading in any securities permanently.

The Commission made no order with respect to Antonia Storm-St. John.

**Mary Dawn Davy, Ahsan Khan and Mark Miller**

*(Misleading advertising and marketing materials. (Public Interest (s.127)))*

On March 31, 1998, the Commission approved settlement agreements reached between staff of the Commission and Mary Dawn Davy, Ahsan Khan and Mark Miller.



Davy agreed that her conduct was contrary to the public interest in that she distributed a book on financial planning to clients which named her as the sole co-author along with Dean Albrecht, a financial marketing consultant resident in the state of Florida. Davy was aware that others had been named as co-authors in different versions of the same book.

Khan and Miller agreed that their conduct was contrary to the public interest in that they each distributed a book on financial planning to existing and potential clients which could have misrepresented their status as the sole co-author along with Dean Albrecht.

Under the terms of the settlement agreement with Davy, she agreed to an order suspending her registration for ten days commencing April 6, 1998. Under the terms of the settlement agreements with Khan and Miller, they each agreed to an order suspending their registration for ten days commencing April 1, 1998. Each respondent further agreed to contribute \$1,500 towards the costs of staff's investigation.

#### **Call-Net Enterprises Inc. and Fonorola Inc.**

*(Application to cease trade shareholder rights plan (Public Interest (s. 127)))*

On May 28, 1998, the Commission delivered oral reasons with respect to an application by Call-Net Enterprises Inc. for an order cease trading the shareholder rights plan of Fonorola Inc. The Commission also gave reasons with respect to an application by Fonorola for an amendment to Call-Net's offer relating to allegations of improper disclosure.

The Commission found that the improprieties alleged of the Fonorola Board of Directors by Call-Net were not supported by the evidence given at the hearing. The Commission also found that the Board understood its fiduciary duty to the company's shareholders and was carrying that duty out.

The Commission also found that there was a reasonable and substantial possibility that a third party offer for Fonorola would be forthcoming. On this basis, the Commission held that the rights plan could remain in effect until June 26, 1998, to allow Fonorola a reasonable opportunity to solicit competing bids. However, should a Call-Net offer be outstanding at June 26, 1998, and the rights plan still be in place with respect to that offer, then an order would be made cease trading the rights plan.

With respect to Fonorola's application for an amendment to the Call-Net offer regarding allegations of improper disclosure, the Commission expressed the preliminary view that none of the matters alleged would likely affect any decision by Fonorola's shareholders to accept or reject the offer but that, if necessary, the matter could be brought back before the Commission for a final determination.

While no third party offer materialized, Call-Net subsequently increased its offer and this revised offer was accepted by Fonorola's shareholders.

#### **CW Shareholdings Inc., Shaw Communications Inc., Shaw Acquisitions Inc. and WIC Western International Communications Ltd.**

*(Application to cease trade shareholder rights plan and application to cease trade bid for shares pending removal of pre-acquisition agreement (Public Interest s. 144) and Revocation or variation of decision (s. 144))*

On April 8, 1998, the Ontario, British Columbia and Alberta Securities Commissions convened a joint hearing to consider an application by CW Shareholdings Inc. for a cease trading order with respect to the shareholder's rights plan adopted by WIC Western International Communications Ltd. on March 30, 1998. On April 9, 1998, the Commissions held that, unless the rights plan ceased to be in effect with respect to CW's offer for WIC by April 20, 1998, an order cease trading the rights plan would be issued on April 21, 1998.

On April 20, 1998, CW applied to the Commissions for cease trading orders with respect to the bid by Shaw Communications Inc. and Shaw Acquisition Inc. for WIC Class B non-voting shares pending the removal of the option and break-up fee provisions of a pre-acquisition agreement between Shaw and WIC. The pre-acquisition agreement gave Shaw the option on WIC's radio broadcasting business. CW also applied for an order revoking the order exempting Shaw from complying with the pre-bid integration requirements provided for in the Securities Act.

At the hearing of the applications, the Commissions held that their primary concern in the context of take-over bids was the protection of the interests of shareholders in the target company. In the case of WIC's shareholders, it was not in the public interest to cease trade the Shaw bid and leave only the lower CW bid outstanding, with little prospect of a third party offer forthcoming. In the circumstances of the case, the Commissions also declined to exercise their jurisdiction to set aside the pre-acquisition agreement between Shaw and WIC. Accordingly, the Commissions stayed the cease trade applications.

With respect to the application to vary the exemption order, the Commissions held that there was no evidence to support the allegation that material facts were not brought to the attention of the Commission panel granting the exemption order and no evidence to support a finding that the Shaw bid discriminated against CW as holder of WIC Class B shares. Accordingly, the application was dismissed. For more information contact **Cathy Singer**, General Counsel, (416) 595-8082

#### **YBM Magnex International Inc.**

*(Order that trading in securities cease. (Public Interest (s. 127)))*

On May 13, 1998, the Commission issued a temporary cease trading order with respect to trading in the securities of YBM Magnex International Inc. A Notice of Hearing and accompanying statement of Staff's allegations was issued on May 26, 1998. The hearing was adjourned to August 19, 1998. The temporary cease trading order remains in effect until the hearing is concluded.



## David A. Brown Speaks on Mutual Fund Industry

*Following are excerpts from the remarks of David A. Brown, OSC Chair, at the Infonex Conference "Managing Mutual Funds: Performance, Operations and Compliance" on July 6, 1998.*

### **The Ontario Securities Commission and the Mutual Funds Industry: Milestones and Challenges for Mutual Funds in the Coming Years**

Fuelled by the longest and seemingly strongest bull market in history, the mutual fund securities markets have enjoyed unprecedented growth. But cracks are starting to appear. Compliance examiners have found serious deficiencies in record keeping, supervision and trust accounts. Although inadvertence constitutes the vast majority of the deficiencies, there are alarming incidents of deliberate fraud by persons licensed to sell mutual funds. Our great fear as regulators is that the bull market has papered over many serious cracks that won't become apparent until the bull market reverses. At the present time, we do not have the tools to cope with a serious market reversal. Nor would we have answers for investors whose savings comprise these billions of dollars as to why their retirement dreams may have been lost ...

*"I consider it my responsibility to bring some vigour to this exercise, to energize my agency and those who will be working with us."*

While much has been accomplished in mutual fund regulatory reform, there remains much to be done. In this respect, there is a clear path of development for these changes to come: the development in the next year of the SRO for mutual fund dealers, the implementation of new rules over the next two years, improved standards of prospectus disclosure, control of franchising to ensure dealer accountability for salespeople, the development of a coordinating mechanism between securities and insurance regulators, the emphasis on improved corporate governance of mutual funds, tackling issues of major consequence such as the Year 2000 challenge, and the regulation of financial planning activities; all of these issues are on our agenda. What's more, that agenda will be backed up by the people and resources to carry it through and to enhance the ongoing activities of compliance and enforcement.

I consider it my responsibility to bring some vigour to this exercise, to energize my agency and those who will be working with us on these important initiatives, to ensure that the milestones continue to be met, and to account to our clients, investors and capital market participants, on our progress.

*(Setting New Standards, continued from cover)*

3. New independent reporting. The report recommends expanding the "trigger" for an independent technical report to include when an issuer: becomes a reporting issuer in each CSA jurisdiction; files a listing application; reports resources or reserves on a material property for the first time; and reports a cumulative 100% change in independently reported resources and reserves. Current requirements to file independent reports with long form prospectuses and for valuations have been maintained.

*"The recommendations aim to reinforce Canada's leadership in the exploration and mining industry."*

4. The report also recommends that Canadian properties be assayed by an accredited Canadian lab.
- Other recommendations include:
- that the federal and provincial governments expand their market fraud units;
  - that regulatory authorities, stock exchanges, the RCMP and criminal justice officials establish a formal national coordinating mechanism for market fraud;
  - that the TSE strengthen its oversight and scrutiny of mineral exploration and mining company operations, disclosure and compliance by forming a listed companies surveillance unit; and
  - that the TSE be given specific discretionary authority to require listed companies to obtain independent verification of data.

In addition, on July 3 the CSA published for comment National Instrument 43-101 (Standards of Disclosure for Exploration, Development and Mining Properties), and its companion policy which updates and expands on existing National Policy No. 2-A and National Policy No. 22.

For more information, call **Morley Carscallen**, Vice Chair, OSC, (416) 593-8081 or **Kathy Soden**, Manager, Market Operations, (416) 593-8749, both of whom were members of the Task Force.

21 OSCB July 3, 1998 page 4213

21 OSCB June 12, 1998 page 3661







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